

E0-508

SURFACE TRANSPORTATION BOARD

Washington, DC 20423

Office of Economics, Environmental Analysis, and Administration

May 21, 2007

Jeffrey A. Weeks
Assistant Field Manager, Nonrenewable Resources
Bureau of Land Management
Ely Field Office
HC 33 Box 33500 (702 No. Industrial Way)
Ely, Nevada 89301-9408

Re: Ely Energy Center Project – 2850 (NV-043), N-82076

Dear Mr. Weeks:

Thank you for inviting the Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) to participate as a cooperating agency in the preparation of the environmental impact statement (EIS) for the Ely Energy Center project in White Pine County, Nevada.

While the Board has broad economic regulatory oversight of railroads, including rail line construction, the Board's licensing authority extends only to transportation by a rail carrier, or a person providing common carrier railroad transportation for compensation. See 49 U.S.C. 10102(5).

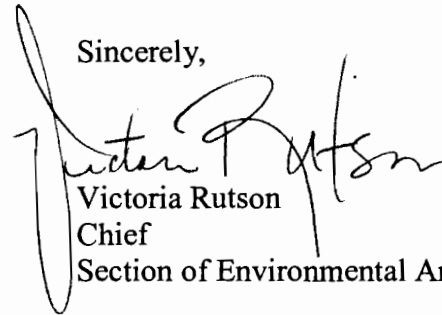
Here, it is the Board's understanding that the project involves the rehabilitation of an existing rail line as a private track in order to facilitate the movement of unit trains of coal to and from the proposed Ely Energy Center. In response to your letter, a member of my staff contacted Joe Incardine of your office and met with Thomas Wilcox of Troutman Sanders LLP to learn more about the proposed project. Based on the information provided by Mr. Wilcox, on behalf of Nevada Power Company, it appears that no new rail construction is currently contemplated for this project. Furthermore, the rail line appears to qualify as "private track" rather than a rail line in interstate commerce because it will be used to serve only the proposed power plants. For these reasons, the Board could not license or regulate the line by law.

The Board may, however, have a licensing role in the operation of the rehabilitated rail line. Because it is presently contemplated that a third party contractor will operate over the proposed line, it is possible that the third party would need to obtain operating authority from the Board, depending on the details of the contract. Yet, even if

an operating license is required, it is doubtful that SEA's threshold level of an increase in at least 8 trains a day for an attainment area would be met. See 49 CFR 1105.7(e)(5). In such circumstances, SEA is not required to conduct an environmental review and does not need to participate as a cooperating agency in the EIS for this project.

Thank you again for your invitation. You will find the information from Mr. Wilcox attached. If you have any questions, please feel free to contact Danielle Gosselin of my staff at (202) 245-0300, or at danielle.gosselin@stb.dot.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is fluid and cursive, with a large initial "V" and "R".

Victoria Rutson
Chief
Section of Environmental Analysis

Attachment

cc: Thomas Wilcox, Esq.
Joe Incardine